

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBERT JOSEPH FIORE, II, )  
Plaintiff, )  
v. ) 1:15CV641  
H.L. CRADDOCK, et al., )  
Defendant(s). )

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. However, pursuant to the Prison Litigation Reform Act, Plaintiff may no longer proceed *in forma pauperis* in this Court unless he is under imminent danger of serious physical injury. The Act provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). In this Court alone, Plaintiff has had seven cases dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief could be granted. Fiore v. Benfield, No. 1:15CV271 (M.D.N.C. Oct. 7, 2015)

(unpublished); Fiore v. Auten, No. 1:15CV52 (M.D.N.C. June 24, 2015) (unpublished); Fiore v. Auten, No. 1:14CV574 (M.D.N.C. June 1, 2015) (unpublished); Fiore v. Sherill, No. 1:14CV742 (M.D.N.C. Mar. 19, 2015) (unpublished); Fiore v. Auten, No. 1:14CV653 (M.D.N.C. Mar. 19, 2015) (unpublished); Fiore v. Auten, No. 1:14CV652 (M.D.N.C. Mar. 19, 2015) (unpublished); Fiore v. Auten, No. 1:14CV575 (M.D.N.C. Mar. 19, 2015) (unpublished). Therefore, he can no longer bring actions *in forma pauperis* without a sufficient allegation that he is under imminent danger of serious physical injury. None of the allegations in the present Complaint satisfy that requirement. Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, accompanied by the \$400.00 filing fee. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

*In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which is accompanied by the \$400.00 filing fee.

This, the 27<sup>th</sup> day of January, 2016.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge